

Serial No.: 10/688,224

Examiner: Catherine S. Williams

Group Art Unit: 3763

STATUS OF CLAIMS

Claims 3-7, 9-11, 13, 15-30, and 32-33 are presently pending. Claims 1-2, 8, 12, 14, and 31 were previously cancelled by Applicant. Claims 13 and 18-28 were previously withdrawn from consideration as belonging to a non-elected species. By this Amendment, Applicant has amended independent claims 3, 7, 15 and 17. Support for the amendments to these claims is provided, *inter alia*, in the specification on page 4, lines 8-10, page 2, line 35 to page 3, line 6 and in the claims as originally filed. Applicant states that there is no issue of new matter.

REMARKS

Applicant acknowledges that the Examiner has withdrawn her indication of allowability of claims 3-7, 9-11, 17, 29-30, and 32-33 (and objected to claims 15-16 as dependent upon a rejected base claim) in view of a new ground of rejection under 35 U.S.C. 102(b), which is the sole outstanding issue in the present application.

Rejection Under 35 U.S.C. 102(b)

The Examiner rejected claims 3-7, 9-11, 15-17, 29-30, and 32-33 as being anticipated by U.S. Pat. No. 5,562,652 (Davis).

In response, Applicants respectfully traverse the rejection and their accompanying remarks. Davis does not teach the invention of the claims. For a reference to anticipate a claim it must disclose each and every element of the claim. See MPEP 2131 and cases cited therein, particularly *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989) and *In re Marshall*, 578 F.2d 301, 304, 198 USPQ 344, 346 (Fed. Cir. 1978). The Davis reference fails as an anticipatory reference because it fails to teach all of the claimed elements of the present invention.

The present invention is directed to medical devices having a false lumen that has been sealed to prevent the anti-microbial agent contained therein from directly entering into the body or bloodstream. As taught by Applicant in the specification, "it is desirable to prevent iodine in the lumen from escaping directly through the open catheter tip and into the body, yet deliver iodine into the inlet and outlet lumens" (page 3, lines 2-5). Thus, the "medical device [of the present invention] is designed to prevent an anti-microbial agent in the false lumen from

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escaping directly into the body and to control the release of such anti-microbial agent into the body." (Specification, page 4, lines 8-12)(emphasis added).

In contrast, Davis does not teach such a "sealed false lumen." Rather, Davis requires that the "reservoir 42 is constructed from a material which *permits diffusion of water vapor from the surrounding tissue inwardly toward and into the reservoir 42 triggering the production of antiseptic moities [sic] produced from the water-activated antiseptic agent and also the production of carrier molecules, which cannot penetrate through the outer surface 34.*" (Davis, Col. 4, lines 17-23)(emphasis added). As shown in Figure 5 of Davis, water vapor migrates from surrounding tissues of the body inwardly toward to reservoir to active the antiseptic agent contained therein (see "Arrows A" of Figure 5 and text accompanying Figure 5). Thus, water vapor from body tissue is allowed to permeate and enter the reservoir 42. Davis does not teach or suggest any embodiment which does not require such interaction between tissue fluids and the reservoir 42 in order to activate the antiseptic agent contained within the reservoir. There is no teaching or suggestion of sealing the reservoir 42 to prevent the anti-microbial agent contained therein from directly entering into the body or bloodstream.

Given this, Applicant states that Davis fails to teach the required element of a sealed false lumen. Thus, Applicant respectfully requests that the Examiner reconsider and withdraw the sole remaining rejection under 35 U.S.C. 102(b).

CONCLUSION

Applicant respectfully submits that all pending claims are in condition for allowance, early notification of which is earnestly solicited. Should the Examiner be of the view that an interview would expedite the application at large, request is made that the Examiner telephone the undersigned attorney at (908) 518-7700, ext. 7 in order to resolve any outstanding issues. The Office is authorized to charge any fees required to deposit account number 50-1047.

FEES

The Office is authorized to charge any fees required, to deposit account number 50-1047.

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Respectfully submitted,



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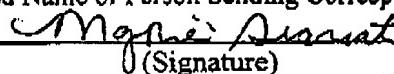
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